IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19305 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAHDEVSINH LAYAKSINH TOMAR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/11/2005

ORAL JUDGMENT

1. Sahdevsinh Layaksinh Tomar-petitioner has filed this habeas corpus petitioner under Article 226

of the Constitution of India praying for quashing and setting aside the order of detention dated 13.09.2005 passed by detaining authority under the provisions of the Gujarat Prevention of Anti-social activities Act, 1985 (for short 'PASA Act') which is illegal null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petitioner was filed on 19.09.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued RULE on 23.09.2005 which was made returnable within four weeks and that is why this matter has come up before this Court.

2. Mr. H.R. Prajapati, learned Advocate for the petitioner has invited my attention to the order of detention dated 13.09.2005 and grounds supplied therein. In the grounds of detention two offences have been shown as registered against the detenu. The first offence dated 25.07.2005 is being registered as C.R. No.1191/05 at Prohibition Station (East Division) punishable under Section 66.1B, 65E and 81 of the Bombay Prohibition Act. The second offence dated 31.08.2005 is being registered as C.R.

No.118/05 at Nadiad Town Police Station punishable under Section 66.1B, 65E and 81 of the Bombay Prohibition Act. In connection with the first offence the authority confiscated 160 litters country liquor along with Rs.680/- in cash. In connection with the second offence the authority confiscated 450 litters country liquor along with one 'Maruti Esteem' car valued at Rs.10,000,00/-. In both the offences investigation is going on.

3. Mr. H.R. Prajapati, learned Advocate for the petitioner further stated that on the basis of two offences mentioned above petitioner was termed as 'Bootlegger' within the meaning of Section 2(b) of the PASA Act. He has also stated that the authority has also passed order under sub-Section (2) of Section 3 with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of 'public order'.

4. Learned Advocate for the petitioner has placed reliance on the judgment of apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of

Police, Ahmedabad City & Another reported in AIR 1989 SC 491 and Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.) decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. He has also relied on judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City (Coram: K.M. Mehta,J.). Learned Advocate for the petitioner has also relied upon the judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu and others reported in AIR 2003 SC 971.

5. Mr. H.R. Prajapati, learned Advocate for the petitioner has made following submissions,

5.1 “(b). The petitioner respectfully states that it is alleged in the ground of detention that the petitioner is a boot-legger and his activities are prejudicial to the maintenance of public order. The petitioner respectfully states that in the instant case,

the detaining authority has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect the maintenance of public order. It may be that the petitioner is a boot-legger within the meaning of Section 2(b) of the Act, but merely because the petitioner is a boot-legger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-Section (4) of Section 3 of the Act, his activities as a boot-legger affect adversely or are likely to affect adversely the maintenance of public order. The detention order cannot, therefore, be uphold.

5.2 (f). The petitioner respectfully states that mere bootlegging activities themselves is not affecting the maintenance of public order and public health and there is no credible material on record to show about disturbance of public order and public health. Therefore, the detention order is required to

be quashed and set aside.”

6. Mr. H.R. Prajapati, learned Advocate for the petitioner further submitted that by no stretch of imagination petitioner can be detained under the provisions of PASA Act only on the grounds of two offences mentioned above wherein petitioner is alleged to be a 'Bootlegger'. He also placed reliance on various provisions of the Act as well as various decisions of the Hon'ble apex Court and this Court.

7. Mr. Gohil, learned A.G.P. has relied upon affidavit of Commissioner of Police in which it has been stated as under,

> 7.1 “I have formulated the grounds of detention and all those grounds are true, correct, clear and proper. I say that in the present case, amongst the relevant materials, I have carefully examined the documents relating to the two cases registered against the detenu and from those materials, it is

clear that the detenu falls within the definition of 'Bootlegger' as defined u/s.2(b) of the PASA Act. Therefore, on carefully scrutinizing, studying, examining and considering the materials placed before me including the papers pertaining to the above cases and after applying my mind to the facts of the case, I came to the conclusion, after subjectively satisfying myself that the detenu is dealing in illegal liquor business and he is disturbing the public order, public peace and public health and it is likely that continuance of his anti-social and bootlegging activities may cause grave or wide-spread danger to life, property and public health. Therefore, after subjectively satisfying that the anti-social and bootlegging activities of the detenu cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu under the PASA Act with a view to immediately

prevent him from continuing such illegal, anti-social and bootlegging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper."

8. Heard, Mr. Gohil, learned A.G.P. for respondent-detaining authority and he has tried to support the order of detention as well as grounds stated therein.

9. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is two registered criminal cases and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'. The offences committed by the petitioner pertains to prohibition to which I have already made reference in my earlier part of the

order. Mere involvement of petitioner in bootlegging activity may not amount to dangerous activity by detenu and mere mention of them unless supported by any material cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that activity of petitioner is prejudicial to maintenance of 'public order' and 'public health'.

10. In the present case, also, there was no ground with the detaining authority, except, two criminal cases registered against the petitioner to arrive at subjective satisfaction that activity of detenu is prejudicial to the maintenance of 'public order' and 'public health'. Therefore, the order of detention passed by detaining authority is contrary to law and deserves to be quashed and set aside.

11. In view of the above, this petition is allowed and order of detention dated 13.09.2005 passed by Commissioner of Police, Ahmedabad city is hereby quashed and set aside. Detenu is, therefore, ordered to be set at liberty forthwith if he is not

required in connection with any other case by the authority. Rule made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

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